CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 13/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70001/2016 dated 5/1/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST/1580/2010	DHUPAR CHEMICALS P LTD 782, TILAK NAGAR KANPUR(UP)

Name and Address of Respondent: CCE, KANPUR
117/7, SARVODAYA NAGAR
KANPUR(UP)

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH VAISH &ASSOCIATES,ADV
FLAT NO 1105, 11THFLOOR
TOLSTOY HOUSE,
TOLSTOY MARG,NEW DELHI

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

S.T.Appeal No.1580/10

Arising out of OIA No.409-410-ST/APPL/KNP/2010 dated 20/08/2010 passed by the Commissioner (Appeals-), Central Excise, Customs, Kanpur

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Dhupar Chemicals (P) Ltd. ...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Kanpur RESPONDENT (S)

APPEARANCE

Shri Vishwanath Shukla, Adv. for the Appellant (s)
Shri D.K.Deb, Asstt.Commr. (A.R.) for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 05.01.2016

Final ORDER NO. 70001/2016

Per Mr. Anil Choudhary :

The Appellant, M/s Dhupar Chemicals (P) Ltd., is in Appeal against Order-in-Appeal No. 409-410-ST/APPL/KNP/2010 dated 20/08/2010 passed by the Commissioner (Appeals-), Central Excise, Customs & S.Tax, Kanpur, whereby the penalty under Section 76 and 77 have been confirmed.

2. The brief facts are that the appellant manufacturers chemicals and supplying the same to the buyer. The appellant paid service tax on reverse charge basis on the output freight. The appellant was entitled to benefit of exemption Notification No.32/04-ST which provided for exemption from the gross value of transport charges as is in excess of 25% of the gross amount charged from the customers by such GTA for providing the said taxable service. During the period October 2006 to April 2007 the appellant availed exemption on part of the transactions for transportation and did not avail exemption in respect of the other part and paid the service tax on the cross value without availing the benefit of exemption. On being objected to by the revenue that as the appellant have not availed exemption during the said period on all the transactions eligible, they cannot avail the exemption on some transactions during the period. The appellant chose to pay the differential tax with interest which was paid during the month of January to March 2007. Subsequent to that vide SCN dated 7/5/2007 the appellant was required to show cause as to why for short payment of the tax they be not subject to penalty under sections 76, 77 and 78 and the service tax already deposited with interest be not

appropriated. The appellant contested the SCN and the same was adjudicated vide order your dated 18/11/09 holding that the appellant could not have availed exemption on the part of the transactions so eligible and penalty was imposed under the provisions of section 76 Rs. 42,200/- and further Rs.1000/- under section 77, whereas the penalty under section 78 was not imposed.

3. Both the assessee and revenue filed appeals before the Commissioner (Appeals). The ld. Commissioner (Appeals) held that the appellant was entitled to exemption under notification number 34/04 – ST. The ld. Commissioner (Appeals) was pleased to dismiss the appeal of revenue holding that no penalty under section 78 is imposable as there is no such element of fraud collusion, mis-statement et cetera. However, the ld. Commissioner (Appeals) confirmed the penalty under section 76 observing that the appellant was required to deposit service tax on the due date and the same have been admittedly paid after some delay.

4. Heard the parties.

5. In view of the finding of the Commissioner (Appeals) that the appellant was entitled to the benefit of exemption notification, I hold that the very basis of the demand of short payment does not stand. Accordingly, penalty is imposable under section 76 when the very demand has got no basis. I further hold that there is no provision in the Act and the Rules that the assessee cannot avail the benefit of an exemption notification on the part of the transactions and as such the very foundation of the show cause notice is bad. In this view of the

matter, I allow the appeal and the impugned order is set aside to the extent penalty is retained under sections 76 and 77 of the Act. The appellant will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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